

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH DANIEL FOX,

Defendant.

CR 21-44-M-DLC

AMENDED ORDER

This Order amends the Court's prior Order adopting Judge DeSoto's Findings & Recommendation Concerning Plea (Doc. 22). (Doc. 23.) In that Order, the Court erroneously adjudged Mr. Fox guilty on Counts I and III instead of Counts II and III. As such, the Court amends its prior order as follows:

Before the Court is United States Magistrate Judge Kathleen L. DeSoto's Findings & Recommendation Concerning Plea. (Doc. 22.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Mr. Fox is charged by Indictment with one count of conspiracy to possess with intent to distribute methamphetamine and heroin, in violation of 21 U.S.C. § 846 (Count I), one count of possession with intent to distribute methamphetamine and heroin, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Count II), and one count of prohibited person in possession of firearms and ammunition, in violation of 18 U.S.C. § 922(g)(3) (Count III). (Doc 2.) Judge DeSoto recommends that this Court accept Mr. Fox's guilty plea as to Count II, to the extent it charges possession with intent to distribute heroin (not to the extent it charges possession with intent to distribute methamphetamine) and Count III.

The Court finds no clear error in Judge DeSoto's Findings and Recommendation and adopts it in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report. The Court will adjudicate the issue of forfeiture upon motion of the United States.

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 22) is ADOPTED in full.

IT IS FURTHER ORDERED that Mr. Fox's motion to change plea (Doc. 15) is GRANTED.

IT IS FURTHER ORDERED that Mr. Fox is adjudged guilty as charged in Count II of the Indictment, only to the extent it charges possession with intent to

distribute heroin (not to the extent it charges possession with intent to distribute methamphetamine) and Count III.

DATED this 22nd day of February, 2022.



Dana L. Christensen, District Judge
United States District Court